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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SMASH TECHNOLOGY, LLC, a Nevada
limited liability company; and MICHAEL
ALEXANDER, an individual;

Plaintiffs,

vs.

SMASH SOLUTIONS, LLC, a Delaware
limited liability company; JERRY “J.J.”
ULRICH, an individual; SMASH
INNOVATIONS, LLC, a Wyoming limited
liability company; and FERACODE, LLC, a
Utah limited liability company,

Defendants.

**SHORT FORM DISCOVERY MOTION
TO COMPEL PLAINTIFFS’
RESPONSE TO DEFENDANTS’
SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Civil No. 2:19-cv-00105-TC-PMW

Judge Tena Campbell

Magistrate Judge Paul M. Warner

SMASH SOLUTIONS, LLC, a Delaware
limited liability company; JERRY “J.J.”
ULRICH, an individual; and JOHN DOES 1-3;

Counterclaim Plaintiffs,

vs.

SMASH TECHNOLOGY, LLC, a Nevada
limited liability company; and MICHAEL
ALEXANDER, an individual;

Counterclaim Defendants.

Defendants Smash Solutions, LLC, Jerry Ulrich, and Smash Innovations, LLC, through their counsel of record Matthew C. Barneck, Zachary E. Peterson, and Kristina H. Ruedas of RICHARDS BRANDT MILLER NELSON, and pursuant to Rule 37(a)(3)(B) of the Federal Rules of Civil Procedure and Local Rule 37-1, seek an Order of the Court compelling Plaintiffs and Counterclaim Defendants Smash Technology, LLC and Michael Alexander to respond to Smash Defendants’ Second Set of Requests for Production of Documents as required by Rule 34(b)(2). A copy of these discovery requests is attached as *Ex. 1*.

Plaintiffs filed this case on January 28, 2019. After the parties exchanged initial disclosures and a first set of discovery requests, Defendants served their Second Request for Production of Documents on September 19, 2019. Plaintiffs have never responded or objected to these Requests. Defendants informally agreed to extend the response time during the fall of 2019 because Plaintiff Michael Alexander was reportedly experiencing a serious health condition. However, that period of extension expired when Defendants’ counsel then attempted to confer with Plaintiffs’ prior counsel on this issue. (*See* Letter from Matthew Barneck to Darren Reid, dated December 12, 2019, attached as *Ex. 2*.) The next day, Mr. Reid moved to withdraw as Plaintiffs’ counsel of record. [Doc. 70.]

On December 31, 2019, attorneys from Deiss Law PC entered their appearance as counsel of record for Plaintiffs. [Doc. 74.] Defendants then contacted new counsel to notify them of the past due discovery requests. (*See* Email dated January 2, 2020, attached as *Ex. 3*.) A month later, Defendants' counsel again communicated to Plaintiffs' counsel regarding the failure to respond to Defendants' second request for production. (*See* Email dated February 11, 2020, attached as *Ex. 4*.) To date, Plaintiffs have not responded to Defendants' Second Request for Production of Documents, nor have they indicated when responses can be expected. The time for responding under Rule 34(b)(2) has expired.

The Court should compel Plaintiffs to comply with Rule 34 and respond to Defendants' Second Request for Production of Documents. The failure to do so has hindered Defendants' ability to defend against Plaintiffs' claims. It has also led to unnecessary delays in discovery as Defendants wait for responsive information before pursuing necessary depositions. Therefore, the Court should require Plaintiffs to respond within fourteen (14) days of an Order. Pursuant to Rule 37(a)(5) of the Federal Rules of Civil Procedure, the Court should also Order the Plaintiffs to pay the Defendants' reasonable expenses including attorney fees incurred in making the Motion.

DATED this 2nd day of March, 2020.

RICHARDS BRANDT MILLER NELSON

/s/ Matthew C. Barneck
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ZACHARY E. PETERSON
KRISTINA H. RUEDAS
*Attorneys for Smash Solutions, LLC,
Smash Innovations, LLC, and Jerry J. Ulrich*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of March, 2020, I electronically filed the foregoing **SHORT FORM DISCOVERY MOTION TO COMPEL PLAINTIFFS' RESPONSE TO DEFENDANTS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS** with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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/s/ Matthew C. Barneck

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